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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,837	07/16/2003	John F. Swigart	005127.85919	8775
22909	7590	03/11/2005		
BANNER & WITCOFF, LTD. 1001 G STREET, N.W. WASHINGTON, DC 20001-4597			EXAMINER PATTERSON, MARIE D	
			ART UNIT 3728	PAPER NUMBER

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/620,837

Applicant(s)

SWIGART ET AL. 

Examiner

Marie Patterson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25, 28-55, 57-63 and 66-78 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-25, 28-55 and 72-78 is/are allowed.
- 6) ☒ Claim(s) 57-63 and 66-71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. *Claim Rejections - 35 USC § 112*

2. Claims 63-71 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 63-71 the phrase "a parting line" is confusing, vague, and indefinite because it is not clear what structural limitations applicant intends to encompass with such language. It is not clear what disclosed elements applicant is referring to with such language and therefore it is not clear what structures applicant intends to encompass with said language. Particularly the phrase "extending from the first surface to the second surface" is confusing, not shown, and it is not clear from the specification as to what structural limitations applicant intends to encompass with such language. The particular phrases of the dependent claims are not understood inasmuch as the drawings do not show a non-linear line or other such structure as claimed and therefore it is not clear what structural limitations applicant intends to encompass with such language.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 63 and 66-71 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Swigart (6457262).

Swigart clearly discloses the use of blow molding as a method (column 5 lines 25-28) of forming the bladder which has a first surface and second surface and therefore inherently have a "parting line" inasmuch as the phrase is understood. Since applicant has disclosed and argued that a parting line is an inherent feature of a blowmolded structure, the bladder of Swigart is considered to show such structures inherently because it is made by blowmolding.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 57, 59-63, 66-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swigart in view of Roux (2002/0013967).

Swigart shows a shoe with a bladder having lobes encapsulated in a foam material substantially as claimed except for the exact shape of the bladder. Roux teaches forming a cushioning bladder with a plurality of radial lobes shaped as claimed. It would have been obvious to form the bladder as taught by Roux in the device of Swigart to provide optimal cushioning/support.

7. Claims 57, 59-63, and 66-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swigart in view of either Dean (5704137) or Schmidt (5545463).

Swigart shows a shoe with a bladder encapsulated in foam substantially as claimed except for the bladder being devoid of internal connections. Either Dean or Schmidt teaches bladders which have a plurality of interconnected chambers and the interior of such being devoid of internal connections. It would have been obvious to form the internal area devoid of internal connections (i.e. valves) as taught by either Dean or Schmidt in the shoe and bladder of Swigart to reduce the cost and weight of the device.

In reference to claims which refer to the pressure of the air in the bladder, Swigart discusses numerous different pressures (column 5 lines 28-35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use air at a pressure of 0-5psi, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Allowable Subject Matter

8. Claims 1-25, 28-55, and 72-78 are allowed.

Response to Arguments

9. Applicant's arguments filed 2/18/05 have been fully considered but they are not persuasive.

In response to applicants' arguments directed towards the teachings of Roux, Roux discusses and clearly teaches making a bladder from a "single cell" (see page 4 paragraph 0044).

In response to applicants' arguments directed towards the rejection of claim 63, applicant states that the claimed "parting line" is "a structural feature of an object that is

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formed through a blow molding operation” and since the bladder/object of Swigart is made by blow molding (see column 5 lines 25-28) then the bladder/object of Swigart is considered to inherently have a “parting line” as claimed and inasmuch as applicant has disclosed such.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (703) 872-9306

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(FORMAL FAXES ONLY). Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.

A handwritten signature in black ink, appearing to read 'Marie Patterson', with a stylized, flowing script.

Marie Patterson
Primary Examiner
Art Unit 3728